IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-812

CHAMPION OIL SERVICE COMPANY, *Petitioner*

v.

SINCLAIR OIL CORPORATION,
SINCLAIR REFINING COMPANY, and
ATLANTIC RICHFIELD COMPANY,
Respondents

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITIONER'S REPLY MEMORANDUM

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Respondents, in their brief in opposition, urge three reasons for denying review of this Petition: (1) that upon the entire record the court of appeals properly found that Champion's inability to extricate itself from its financial predicament had nothing to do with the lease/leaseback and related arrangements with

Sinclair and was occasioned by Champion's poor financial condition; (2) that the holding that there was no unreasonable restraint was based on an appropriate analysis of the impact upon Champion and its market; (3) that review would relate only to the limited factual situation presented and would not deal with any question of substance not already decided by this Court.

I.

Respondents strenuously urge that the court of appeals properly found that it was Champion's poor financial condition which was the cause of its problems and not anything that Sinclair did with respect to its lease/leaseback and related arrangements with Champion (Br. in Opp. 10). However, respondents, like the court of appeals, rely upon a limited set of facts which ignore the basic thrust of the record evidence. There was sufficient evidence in the record upon which the jury could have inferred that Sinclair did, in fact, intend in 1965-1966 to gain control of the petroleum product volume of Champion and, pursuant to that intent, used the lease/leaseback arrangements in a manner which made it impossible for Champion to develop a distributorship arrangement with a Sinclair competitor. Although Champion was in financial difficulties, it was Sinclair's conduct toward Champion, reflecting its anticompetitive purpose of gaining control of Champion's volume, which precluded Champion from going to another supplier for a distributorship agreement (Pet. 14-17).

In emphasizing what Sinclair's competitors "actually did" in 1966, respondents fail to mention what Sinclair *actually did* in 1965-1966. Contrary to respondents' implication (Br. in Opp. 13), Sinclair's

management did not confine its activities in this period to speculation regarding what would occur if Sinclair did not release Champion's station. Sinclair's anti-competitive intent of gaining the Champion volume was formulated in 1965-1966 and culminated in Sinclair's control of that volume in 1968 (Pet. 11-14, 17-19). Both the formulation of Sinclair's anticompetitive intent and its conduct pursuant to that intent were Sinclair's reaction to the fact that, in 1965, 98% of the Champion volume was the petroleum product of Sinclair's competitors. To accomplish its purpose Sinclair could not permit Champion to develop a distributorship arrangement with a Sinclair competitor. Sinclair's management was fully aware that without the release of its stations Champion could not develop another distributorship with a competitor (Pet. 15-16). Not only did Sinclair refuse to release Champion from the leases as initially recommended by Mr. Kelly, Sinclair proceeded to take over the best four stations which were the subject of the lease arrangments (Pet. 15-16). This takeover, which reduced Champion's volume from 8 to 6 million gallons and increased Champion's cost of operation by one and one-half cents per gallon, was sufficient to undermine any possibility of Champion developing a distributorship agreement with a Sinclair competitor.

Respondent's attempt to gloss over the significance of the management decision to take over the four stations and the actual takeover by contending that Champion negotiated with competing suppliers based on the release of all seven stations (Br. in Opp. 4). This simply was not the case. The Citgo and Sun Oil negotiations took place on the basis that only three stations might be released (I App. 286-287, 290-291). Failure

to obtain release of the leases on all seven stations had a direct bearing on Champion's inability to improve its financial position. (I App. 268-269, 305).[1] Moreover, in 1965, Mr. Young, Vice President of Sinclair, turned down Douglass' request to be released from the lease arrangements on all the stations owned by Champion, which would permit Champion to go to competing supplier (I App. 246-247). And in 1968, when Douglass renewed the request to be released from these arrangements to go to another supplier, Mr. Gordy rejected that request (I App. 361-362; P. Ex. 21, III App. 28, 29; P. Ex. 57, III App. 65, 66). In short, Sinclair refused to release Champion from its lease arrangements with the full knowledge and intent that their failure to do so would substantially injure, if not thwart, Champion's attempts to extricate itself by going to another supplier. It did so with the purpose of precluding petroleum products of its competitors from being sold through Champion affiliated stations and with the purpose of gaining control of the Champion volume. Sinclair's success is dramatically reflected in the record by the fact that Sun, Citgo and American rejected a Champion distributorship in 1966 and Sinclair gained control of most of the Champion volume in 1968.[2] Based on this evidence, the jury could have inferred that Sin-

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[1] Contrary to respondents' assertion, Champion did not utilize the equities in the seven leased stations for financing (Br. in Opp. 8). Indeed, the evidence is uncontradicted that Champion utilized the equities in these stations to secure indebtedness and not for financing (I App. 300).

[2] Respondents misstate the record by urging that Doublass' 1968 attempts to obtain financing had nothing to do with the lease/leasebacks (Br. in Opp. 8). There was direct testimony that financial institutions rejected Champion's efforts for financial assistance because of the existing Sinclair lease arrangements (I App. 395).

clair had an anticompetitive intent, that it acted pursuant to that intent, and that this conduct was the proximate cause of Champion's inability to negotiate a distributorship agreement with a competing supplier.[3]

II.

Respondents attempt to utilize the court's finding on causation as the basis for arguing that the court of appeals did assess the competitive impact under Section 1 of the Sherman Act of Sinclair's activities. (Br. in Opp. 11-12). To the extent that the court of appeals' holding that there was no unreasonable restraint is based upon this causation finding, it suffers from the same defects as the finding itself. In particular, the court of appeals failed to adequately consider the abundant evidence that Sinclair intended that the adverse competitive effect upon Champion take place. Although the court of appeals did refer to Sinclair's intent in entering the arrangements with Champion in 1958 (Pet. App. 9a), the court did not consider the evidence of Sinclair's anticompetitive intent in 1965-1966, which persisted into 1968, and the import of such intent transforming otherwise possibly unobjectionable arrangements into anticompetitive instruments. *Times Picayune Pub. Co.* v. *United States,* 345 U.S. 594, 614 (1953). Moreover, the court of appeals failed to analyze the anticompetitive consequences of Sinclair's conduct toward Champion within the appropriate geographic area during the critical period 1965 through 1968. The court's narrow focus is

[3] Contrary to respondents' suggestion (Br. in App. 6), the Tresler Oil Company proposal was not a viable distributorship offer since it was based on totally unrealistic assumptions (II App. 659-660, 670, 677-678).

completely inconsistent with a thorough rule of reason analysis under Section 1 of the Sherman Act.

III.

In failing to evaluate the nature of the adverse competitive effect on Champion and Sinclair's anticompetitive intent during the critical period 1965-1968, the court of appeals usurped the function of the jury in non *per se* rule of reason cases. The court's approach is totally inconsistent with previous decisions of the Sixth Circuit, which recognize that in non *per se* violations of the antitrust laws "the jury must determine whether the conduct in question unreasonably restrains trade." *Lamb Enterprises, Inc.* v. *Toledo Blade Co.*, 461 F.2d 506, 517 (6th Cir. 1967). Nor can the Courts approach be squared with this Court's admonition in *Continental Ore Co.* v. *Union Carbide & Carbon Corp.*, 370 U.S. 690, 697 (1962), that the question of proximate causation is for the jury to determine.

The instant case is also important because of the vulnerability that it imposes upon independent distributors dealing with large suppliers. If Sinclair had insisted that Champion purchase and sell only Sinclair products when Champion was forced in 1965 to purchase and sell the products of Sinclair's competitors, this could have given rise to a *per se* violation of the Sherman Act as a tie-in. *Redd* v. *Shell Oil Co.*, 1974-2 Trade Cases ¶ 75,390 (D.C. Utah 1974). While the formalities of a tying arrangement are not present here, the coercive aspects of Sinclair's conduct are analogous to tie-ins. Thus, the lease/leasebacks had the potential of dissuading Champion from selling petroleum products of Sinclair's competitors. When that did not work, Sinclair utilized its arrangements with

Champion and took control of most of the Champion product volume. Confronted with such evidence, the jury could properly infer that Sinclair's intent and conduct resulted in an unreasonable restraint of trade in violation of Section 1 of the Sherman Act. The decision below gives major integrated oil companies license, so long as *per se* violations are avoided, to utilize conventional land-financing and other long-term instruments to purposefully impose their will on local independent marketers and destroy those who insist upon their independence.

CONCLUSION

For the reasons set forth above, as well as those contained in the Petition, petitioner prays this Court to grant the Petition and review the judgment and opinion below.

Respectfully submitted,

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